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# International Dimensions of the Principle of Non-Discrimination and the United Nations

## **Cover Page Footnote**

International Law; Commercial Law; Law

# International Dimensions of the Principle of Non-Discrimination and the United Nations

*Luis Valencia-Rodriguez\**

## I. International Law and Human Rights

Under traditional international law, jurisdiction over questions of human rights was vested exclusively in the state. The Covenant of the League of Nations, for example, was silent on the question of human rights, although it did address the protection of minorities.<sup>1</sup> Later the League sponsored the Convention on Slavery<sup>2</sup> and the General Conference of the International Labour Organization approved the Convention on Forced Labour;<sup>3</sup> both instruments demonstrated the international community's resolve to end practices that violate human dignity.

The Charter of the United Nations was a major milestone in the crusade against human rights violations. The charter not only recognized the desirability of protecting human rights from a humanitarian standpoint, but also deemed such protection necessary to maintain international peace and security.

Two purposes of the United Nations are to reaffirm the "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women,"<sup>4</sup> and to achieve international cooperation "in promoting and encouraging respect for human rights and for fundamental freedoms for all."<sup>5</sup> Accordingly, the United Nations is responsible for promoting "universal respect for, and observance of, human rights and fundamental human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."<sup>6</sup> Several Charter provisions implement these admittedly broad policy statements.

The General Assembly, for example, shall initiate studies and

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<sup>1</sup> See, e.g., LEAGUE OF NATIONS COVENANT art. 23(b) ("Members . . . undertake to secure just treatment of the native inhabitants of territories under their control").

<sup>2</sup> 46 Stat. 2183, T.S. No. 778, 60 L.N.T.S. 253 (1926).

<sup>3</sup> 1 LEAGUE OF NATIONS, INTERNATIONAL LABOUR CONFERENCE, 14TH SESS. 858 (1930).

<sup>4</sup> U.N. CHARTER preamble.

<sup>5</sup> *Id.* art. 1:3.

<sup>6</sup> *Id.* art. 55.

make recommendations to assist "in the realization of human rights and fundamental freedoms,"<sup>7</sup> which is related to the pledge of all members "to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55,"<sup>8</sup> including universal respect for human rights.<sup>9</sup> The Economic and Social Council "may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all,"<sup>10</sup> and "shall set up commissions in economic and social fields and for the promotion of human rights."<sup>11</sup> The trusteeship system is designed in part "to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."<sup>12</sup>

These provisions may be interpreted in two different ways. One view holds that the Charter merely establishes a program of action obligating members to cooperate among themselves.<sup>13</sup> Hans Kelsen maintains that,

the Charter does not impose upon the Members a strict obligation to grant to their subjects the rights and freedoms mentioned in the Preamble or in the text of the Charter. The language used by the Charter in this respect does not allow the interpretation that the Members are under legal obligations regarding the rights and freedoms of their subjects. Besides, the Charter in no way specifies the rights and freedoms to which it refers. Legal obligations of the Members in this respect can be established only under the auspices of the United Nations and ratified by the Members.<sup>14</sup>

The contrary view holds that since the protection of human rights figures prominently in the statement of the purposes of the organization, members are under a *legal obligation* to act accordingly.<sup>15</sup> Philip Jessup states that, "[i]t is already the law, at least for Members of the United Nations, that respect for human dignity and fundamental human rights is obligatory. The duty is imposed by the Charter, a treaty to which they are parties."<sup>16</sup>

Recognizing that most states accept this second interpretative current, Egon Schwelb notes that the activities of the United Nations in the field of the human rights are divided into three categories:

One: The action taken, or attempted to be taken, by the United Nations organs on the basis of the authority vested in them under the Charter, expressly or by implication.

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<sup>7</sup> *Id.* art. 13:1(b).

<sup>8</sup> *Id.* art. 56.

<sup>9</sup> *Id.* art. 55(c).

<sup>10</sup> *Id.* art. 62:2.

<sup>11</sup> *Id.* art. 68.

<sup>12</sup> *Id.* art. 76(c).

<sup>13</sup> Schwelb, *The International Court of Justice and the Human Rights Clauses of the Charter*, 66 AM. J. INT'L L. 337, 338 (1971).

<sup>14</sup> *Id.* at 338-39 (quoting Hans Kelsen).

<sup>15</sup> *Id.* at 339 (quoting Lauterpacht).

<sup>16</sup> *Id.* at 339 (quoting Philip Jessup).

Two: The efforts, in part successful, in part not yet so, to persuade States to accept additional legal obligations through the conclusion of additional treaties in the human rights field . . . and through the establishment by these treaties of additional machinery, additional international organs, to those established by and under the Charter. Three: There is, between these two main categories, a twilight zone of acts, fact and situations which come, in part, within the scope of the former category (measures taken on the basis of the Charter, without the intervention of an additional treaty) and, in part, within the scope of the latter, the creation of new instruments setting international standards in human rights.<sup>17</sup>

## II. Universal Declaration of Human Rights and the Convention on the Crime of Genocide

In exercising its responsibilities and duties set forth in the U.N. Charter,<sup>18</sup> the Commission on Human Rights drafted the Universal Declaration of Human Rights.<sup>19</sup> Chairperson Eleanor Roosevelt stated that although the instrument was neither a treaty nor an international agreement and as such did not impose legal obligations, it was declaratory of principles of inalienable human rights setting up a common standard of achievement for all peoples and nations.<sup>20</sup>

While most speakers in the debates preceding the adoption of the Declaration stressed the Declaration's non-committal character,<sup>21</sup> they fervently emphasized the distinct moral value of this historic event.<sup>22</sup> Afterward, neither jurists nor publicists considered the Declaration as establishing legal obligations among states,<sup>23</sup> but rather viewed its purpose as to invite members to develop a specific agenda in the field of human rights, leaving each party to incorporate the principles proclaimed in the Declaration into their domestic legislation.<sup>24</sup>

The Declaration, however, lacked an effective enforcement mechanism which, in the eyes of some international legal scholars,

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<sup>17</sup> Schwelb, *The Teaching of the International Aspects of Human Rights*, 65 AM. J. INT'L L. PROCEEDINGS 242, 243 (1971).

<sup>18</sup> U.N. CHARTER art. 68.

<sup>19</sup> G.A. Res. 217, U.N. Doc. A/810, at 71 (1948).

<sup>20</sup> 1948-1949 U.N.Y.B. 527, U.N. Sales No. 1950.I.11.

<sup>21</sup> The representative of Colombia observed "that the authors of the draft Declaration did not intend to interfere in relations between Governments, or in relations between the Government and the citizens of any state; they intended simply to establish a set of principles, which should, if possible, be implemented." *Id.*

<sup>22</sup> The representative of the United Kingdom stated that the "moral authority of the document that would be adopted by the General Assembly, nevertheless, would serve as a guide to Governments in their efforts to guarantee human rights by legislation and through their administrative and legal practice." The representative of the Philippines stated that "the primary purpose of the Declaration was not simply to achieve a moral success, but to enable man, all over the world, to develop his rights and, in consequent, his personality." *Id.*

<sup>23</sup> Lauterpacht, *The Universal Declaration of Human Rights*, 25 BRIT. Y.B. INT'L L. 354, 356 (1948).

<sup>24</sup> *Id.* at 365-70.

substantially impairs the rights granted by a particular document.<sup>25</sup>

In pursuit of human rights, the United Nations adopted the Convention on the Prevention and Punishment of the Crime of Genocide<sup>26</sup> which describes genocide as a "crime under international law,"<sup>27</sup> committed "with intent to destroy, in whole or in part, a national, ethnic, racial, or religious group as such."<sup>28</sup> The contracting parties agreed to enact the necessary legislation to provide effective punishment for persons guilty of the offences enumerated in the Convention.<sup>29</sup>

The Universal Declaration of Human Rights and the Convention on the Crime of Genocide stressed the principle of non-discrimination, and were important first steps in transforming the respect for human rights into a question of international competence. Both documents opened the way for other significant human rights instruments, ultimately leading to the establishment of international humanitarian cooperation and to the elevation of humanitarian problems to a level of all other international issues.

### III. Work of the Sub-Commission on Prevention of Discrimination and Protection of Minorities<sup>30</sup>

At its first session in 1947, the Commission on Human Rights established the Sub-Commission on the Prevention of Discrimination and Protection of Minorities (Sub-Commission), charged with a mandate:

- (a) . . . to examine what provisions should be adopted in the definition of the principles which are to be applied in the field of the prevention of discrimination on grounds of race, sex, language, or religion, and in the field of the protection of minorities, and to make recommendations to the Commission on urgent problems in these fields; and
- (b) . . . to perform any other functions which may be entrusted to it by the Economic and Social Council or by the Commission on Human Rights.<sup>31</sup>

The Sub-Commission is devoted to defining and studying discriminatory practices; its studies include discrimination in education,<sup>32</sup> discrimination in the matter of political rights,<sup>33</sup> discrimination in

<sup>25</sup> See, e.g., H. Kelsen, *THE LAW OF THE UNITED NATIONS* 41 (1950).

<sup>26</sup> 78 U.N.T.S. 277; G.A. Res. 260, U.N. Doc. A/810, at 174 (1948).

<sup>27</sup> 78 U.N.T.S. at 280; G.A. Res. 260, at 174 (article I).

<sup>28</sup> 78 U.N.T.S. at 280; G.A. Res. 260, at 174 (article II).

<sup>29</sup> 78 U.N.T.S. at 280; G.A. Res. 260, at 175 (article V).

<sup>30</sup> H. SANTA CRUZ, *RACIAL DISCRIMINATION* 34-36, U.N. Doc. E/CN.4/Sub.2/370/Rev.1., U.N. Sales No. E.76.XIV.2 (1976) (Revised and updated version).

<sup>31</sup> 1946-47 U.N.Y.B. 528, U.N. Sales No. 147.I.18.

<sup>32</sup> C. AMMOUN, *STUDY OF DISCRIMINATION IN EDUCATION*, U.N. Doc. E/CN.4/Sub.2/181/Rev.1., U.N. Sales No. 1957.XIV.3. (1957).

<sup>33</sup> H. SANTA CRUZ, *STUDY OF DISCRIMINATION IN THE MATTER OF POLITICAL RIGHTS*, U.N. Doc. E/CN.4/Sub.2/213/Rev.1., U.N. Sales No. 63.XIV.2 (1962).

the matter of religious rights and practices,<sup>34</sup> discrimination in respect of the right of everyone to leave any country, including his own, and to return to his country,<sup>35</sup> discrimination against persons born out of wedlock,<sup>36</sup> equality in the administration of justice,<sup>37</sup> discrimination against indigenous populations,<sup>38</sup> and the rights of persons belonging to ethnic, religious, and linguistic minorities.<sup>39</sup>

The Sub-Commission has played an important role in the surprisingly large number of international human rights instruments prepared by the organs of the United Nations. The International Labour Organization, for example, adopted measures in the areas of employment and occupation at the suggestion of the Sub-Commission,<sup>40</sup> and the United Nations Educational, Scientific and Cultural Organization (UNESCO) prepared and adopted the Convention against Discrimination in Education<sup>41</sup> on the proposal of the Sub-Commission in its Study of Discrimination in Education.<sup>42</sup>

Several other United Nations instruments concerning the elimination of racial discrimination were drafted by the Sub-Commission, including the United Nations Declaration on the Elimination of All Forms of Racial Discrimination<sup>43</sup> and the International Convention on the Elimination of All Forms of Racial Discrimination.<sup>44</sup>

The Declaration on the Elimination of All Forms of Racial Discrimination affirms "the necessity of speedily eliminating racial discrimination throughout the world, in all its forms and manifestations, and of securing understanding of and respect for the dignity of the human person,"<sup>45</sup> and reaffirms that "discrimination between human beings on the ground of race, colour, or ethnic origin is an

<sup>34</sup> A. KRISHNASWAMI, STUDY OF DISCRIMINATION IN THE MATTER OF RELIGIOUS RIGHTS AND PRACTICES, U.N. Doc. E/CN.4/Sub.2/200/Rev.1, U.N. Sales No. 60.XIV.2 (1960).

<sup>35</sup> J. INGLES, STUDY OF DISCRIMINATION IN RESPECT OF THE RIGHT OF EVERYONE TO LEAVE ANY COUNTRY, INCLUDING HIS OWN, AND TO RETURN TO HIS COUNTRY, U.N. Doc. E/CN.4/Sub.2/220/Rev.1, U.N. Sales No. 64.XIV.2 (1963).

<sup>36</sup> V. V. SAARIO, STUDY OF DISCRIMINATION AGAINST PERSONS BORN OUT OF WEDLOCK, E/CN.4/Sub.2/265/Rev.1, U.N. Sales No. E.68.XIV.3 (1967).

<sup>37</sup> M. RANNAT, STUDY OF EQUALITY IN THE ADMINISTRATION OF JUSTICE, U.N. Doc. E/CN.4/Sub.2/296, U.N. Sales No. 71.XIV.3 (1969).

<sup>38</sup> A. EIDE, STUDY OF THE PROBLEM OF DISCRIMINATION AGAINST INDIGENOUS POPULATIONS, U.N. Doc. E/CN.4/Sub.2/1982/33 (1982).

<sup>39</sup> F. CAPOTORTI, STUDY ON THE RIGHTS OF PERSONS BELONGING TO ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES, U.N. Doc. E/CN.4/Sub.2/384/Rev.1, U.N. Sales No. E.78.XIV.1 (1979).

<sup>40</sup> Convention (No. 111) Concerning Discrimination in Respect of Employment and Occupation, adopted June 25, 1958, 362 U.N.T.S. 31.

<sup>41</sup> Convention Against Discrimination in Education, adopted Dec. 14, 1960, 429 U.N.T.S. 93.

<sup>42</sup> C. AMMOUN, *supra* note 32.

<sup>43</sup> G.A. Res. 1904, 18 U.N. GAOR Supp. (No. 15) at 35, U.N. Doc. A/5515 (1963) (proclaimed by the General Assembly on November 20, 1963).

<sup>44</sup> 660 U.N.T.S. 195, reprinted in 5 I.L.M. 352 (1966), adopted by the General Assembly on December 21, 1965, G.A. Res. 2106, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1965).

<sup>45</sup> *Id.*

obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples."<sup>46</sup>

From 1949 to 1967, UNESCO played an important role in studying the scientific and technical aspects of race and discrimination. A conference of experts assembled in Moscow in 1964 studied the biological aspects of race, and adopted a statement which declared that, (1) all men living today belong to a single species and are derived from a common stock,<sup>47</sup> (2) pure races in the sense of genetically homogeneous populations do not exist in the human species,<sup>48</sup> and (3) there is no national, religious, geographic, linguistic, or cultural group which constitutes a race ipso facto.<sup>49</sup> The experts concluded that "[t]he biological data given above stand in open contradiction to the tenets of racism. Racist theories can in no way pretend to have any scientific foundation."<sup>50</sup>

A similar conference on race and racial prejudice in Paris in September 1967 reaffirmed the principles of the Moscow statement and adopted a Statement on Race and Racial Prejudice<sup>51</sup> which declared that the division of the human species into "races" is purely arbitrary, and should not imply any hierarchy whatsoever.<sup>52</sup> The group stated that "[t]he human problems arising from so-called 'race' relations are social in origin rather than biological. A basic problem is racism, namely, anti-social beliefs and acts which are based on the *fallacy* that discriminatory inter-group relations are justifiable on biological grounds."<sup>53</sup>

A Declaration on the subject was prepared at the Seventeenth Session of the UNESCO General Conference, and submitted to the General Conference at its Twentieth Session. The Declaration gave,

a coherent over-all picture of the challenges presented by racism, which are biological, sociological, and juridical as well as cultural, political, economic, and ethical. It is a reference instrument that is all the more fundamental in that its unanimous adoption by the representatives of all member states heightens its moral authority. . . . It lays down the fundamental principle of the equality of all human beings and hence of the unity of the human race. Condemning all those theories that postulate inequalities in the endowments or calling of different peoples, it affirms the right of men and groups to lay claim to their own identity, to consider themselves as different, and to be regarded as such; but, at the same time, it provides that this

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<sup>46</sup> *Id.* at 353.

<sup>47</sup> *Biological Aspects of the Race Question*, 10 UNESCO CHRON. 348, 349 (Nov. 1964).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 351.

<sup>50</sup> *Id.* at 352.

<sup>51</sup> 14 UNESCO CHRON. 138 (1968). The expert committee consisted of geneticists, anthropologists, sociologists, historians, and jurists from Belgium, Brazil, Cuba, France, India, Israel, Japan, Kenya, Poland, Senegal, Soviet Union, Sudan, Trinidad and Tobago, United Kingdom, United States, and Yugoslavia. *Id.*

<sup>52</sup> *Id.* at 139.

<sup>53</sup> *Id.* (emphasis added).



right cannot be invoked by anyone seeking to justify a discriminatory practice on the basis of differences in ethnic group, colour or religion for the purpose of establishing inequality among those displaying such differences. It consequently calls in question policies of forced assimilation that seek to destroy the specific character of a people as well as policies of segregation that are arbitrary because they are in conflict with the rights of nations and the rights of peoples.<sup>54</sup>

These various declarations and statements demonstrate that (1) the principle of equality recognizes that those elements of body and spirit in which all human beings are essentially alike far outweigh and transcend those purely accidental differentiations over which the individual has no control, and (2) racial discrimination is the very negation of the principle of equality, and therefore an affront to human dignity. It is also a negation of the social nature of man, who can reach his fullest development only through interaction with his fellows.

#### IV. International Conventions and Covenants

Without considering the juridical scope of the U.N. Charter and the Universal Declaration, these two instruments proclaimed the international character of the protection of human rights and recognized that this matter was not exclusively a question of state domestic jurisdiction. Beginning with the General Assembly's declaration of its right to intervene in cases of human rights violations,<sup>55</sup> this doctrine has been fostered over the years by the United Nations.

The first international instrument to contain real legal obligations was the Convention for the Protection of Human Rights and Fundamental Freedoms, signed on November 4, 1950, by the thirteen members of the Council of Europe;<sup>56</sup> it created a special commission to deal with complaints from states, as well as from their nationals, but only if the accused state had previously recognized the commission's jurisdiction.<sup>57</sup>

The International Convention on the Elimination of All Forms of Racial Discrimination<sup>58</sup> was an important next step. The Convention consists of a preamble and twenty-five articles. The Convention's carefully prepared and widely accepted definition of "racial discrimination" is,

[A]ny distinction, exclusion, restriction or preference based on race,

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<sup>54</sup> Report of the Committee on the Elimination of Racial Discrimination, 34 U.N. GAOR Supp. (No. 18) at 119, U.N. Doc. A/34/18 (1979).

<sup>55</sup> G.A. Res. 285, U.N. Doc. A/900 (1949).

<sup>56</sup> 213 U.N.T.S. 222. The members consisted of Belgium, Denmark, West Germany, Greece, Iceland, Ireland, Luxembourg, the Netherlands, Norway, Saar, Sweden, Turkey, and the United Kingdom. *Id.*

<sup>57</sup> *Id.* at 234-42.

<sup>58</sup> G.A. Res. 2106, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1965).

colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.<sup>59</sup>

The definition is firmly grounded on the principle of equality, as reflected in several other provisions, such as in the Convention's stated objectives, namely to promote racial equality, not merely colour-values, and "not only *de jure* . . . but also *de facto* equality . . . to allow the various ethnic, racial and national groups the same social development."<sup>60</sup>

The Convention establishes an eighteen-member Committee on the Elimination of Racial Discrimination,<sup>61</sup> charged with reviewing measures taken by the states to implement the Convention, examining the periodic reports submitted by those states on measures taken to give effect to the provisions of the Convention, and making suggestions and general recommendations to the states parties and to the General Assembly.<sup>62</sup> If disputes arise regarding convention obligations, the Committee may establish *ad hoc* conciliation commissions to consider the disputes.<sup>63</sup>

On December 16, 1966, the General Assembly unanimously adopted the International Covenants on Civil and Political Rights,<sup>64</sup> and on Economic, Social and Cultural Rights,<sup>65</sup> as well as the Optional Protocol to the International Covenant on Civil and Political Rights.<sup>66</sup>

These Conventions implement the principles of non-discrimination and equality in the enjoyment of human rights. The Covenant of Civil and Political Rights establishes the eighteen-member Human Rights Committee,<sup>67</sup> which is responsible for considering the reports submitted by states on the measures taken by them to give effect to the provisions of the Covenant and addressing general comments to states.<sup>68</sup> Under the optional provisions of the Covenant, the Committee may consider communications in which a state complains that another state is not fulfilling its Covenant obligations.<sup>69</sup> Under the

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<sup>59</sup> *Id.* art. 1:1; Measures necessary to secure the adequate advancement of racial or ethnic groups or individuals requiring such "pro-equal" enjoyment or exercise of human rights and fundamental freedoms are specifically exempted from the definition of discrimination. *Id.* art. 1:4.

<sup>60</sup> *Report of the Committee on the Elimination of Racial Discrimination*, 37 U.N. GAOR Supp. (No. 18) ¶ 468, at 113, U.N. Doc. A/37/18 (1982).

<sup>61</sup> G.A. Res. 2106, *supra* note 58, art. 8.

<sup>62</sup> *Id.* art. 9.

<sup>63</sup> *Id.* art. 12:1(a).

<sup>64</sup> G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966).

<sup>65</sup> *Id.* at 49.

<sup>66</sup> *Id.* at 59.

<sup>67</sup> *Id.* art. 28:1, at 56.

<sup>68</sup> *Id.* art. 40:4, at 57.

<sup>69</sup> *Id.* art. 41:1.

Optional Protocol, the Committee may deal with communications from individuals alleging to be victims of human rights violations.<sup>70</sup> For inter-state disputes, it may establish *ad hoc* conciliation commissions to reach amicable solutions.<sup>71</sup>

According to the Covenant on Economic, Social and Cultural Rights, states are obligated to submit reports on the measures they have adopted and the progress made towards the fulfillment of those rights for the consideration of the Economic and Social Council.<sup>72</sup> The Council may call upon the specialized agencies to submit reports on the "progress made in achieving the observance of the provisions of the Covenant falling within the scope of their activities."<sup>73</sup>

To assist in the consideration of such reports, the Council established a sessional working group called the Committee on Economic, Social and Cultural Rights,<sup>74</sup> which consists of eighteen experts. Representatives of specialized agencies may be invited to participate in the Committee's proceedings when matters falling within their areas of expertise are considered.<sup>75</sup>

The Committee's mandate is to assist the Council in fulfilling its responsibilities under articles 21 and 22 of the Covenant.<sup>76</sup> These articles authorize the Council to submit to the General Assembly,

reports and recommendations of a general nature and a summary of the information received from the states Parties . . . and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized [in the Covenant];<sup>77</sup> and to] . . . bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports . . . which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.<sup>78</sup>

On November 30, 1973, the General Assembly adopted the International Convention on the Suppression and Punishment of the Crime of Apartheid.<sup>79</sup> The Convention declares apartheid to be a

crime against humanity and that inhuman acts resulting from the policies and practices of *apartheid* and similar policies and practices of racial segregation and discrimination . . . are crimes violating the principles of international law, in particular the purposes and princi-

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<sup>70</sup> *Id.* art. 1, at 59.

<sup>71</sup> *Id.* art. 42:1(a), at 57.

<sup>72</sup> *Id.* art. 16:1, at 51.

<sup>73</sup> *Id.* art. 18.

<sup>74</sup> E.S.C. Res. 1985/17, 173 U.N. ESCOR Supp. (No. 1) at 15, 16, U.N. Doc. E/1985/85 (1985).

<sup>75</sup> *Id.* art. (b), at 16.

<sup>76</sup> *Id.* art. (f); 1985 U.N.Y.B. 879.

<sup>77</sup> G.A. Res. 2200, *supra* note 64, art. 21, at 52.

<sup>78</sup> *Id.* art. 22.

<sup>79</sup> G.A. Res. 3068, 28 U.N. GAOR Supp. (No. 30) at 75, U.N. Doc. A/9030 (1974).

ples of the Charter of the United Nations, and constituting a serious threat to international peace and security.<sup>80</sup>

Persons charged with the acts enumerated in the Convention,<sup>81</sup> "may be tried by a competent tribunal of any State Party to the Convention which may acquire jurisdiction over the person of the accused, or by an international penal tribunal having jurisdiction with respect to those States Parties which have accepted its jurisdiction."<sup>82</sup> Those acts "shall not be considered political crimes for the purpose of extradition."<sup>83</sup>

The Group of Three, who are appointed by the Chairman of the Commission on Human Rights from the representatives of states parties, monitors the implementation of this Convention.<sup>84</sup> The Group considers reports submitted by the states on the legislative, judicial, administrative, and other measures adopted by the states to give effect to the provisions of the Convention.<sup>85</sup>

Preceded by a declaration, the General Assembly adopted on December 18, 1979, the International Convention on the Elimination of All Forms of Discrimination Against Women,<sup>86</sup> which also establishes a special twenty-three member committee.<sup>87</sup> The Committee is charged with considering reports of states parties on measures adopted to give effect to the provisions of the Convention,<sup>88</sup> preparing suggestions and general recommendations based on the reports and other information received from states parties, and reporting annually to the General Assembly.<sup>89</sup>

On December 10, 1984, the General Assembly adopted the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment,<sup>90</sup> which defines "torture" as,

[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or from a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any

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<sup>80</sup> *Id.* art. I.

<sup>81</sup> The following activities, if perpetrated against a racial group, constitute "acts" within the meaning of the Convention: denying the right of life or liberty, imposing living conditions to cause physical destruction, preventing participation in political, social, economic and cultural life, exploiting labor, and depriving fundamental rights and freedoms. *Id.* art. II; at 76.

<sup>82</sup> *Id.* art. V.

<sup>83</sup> *Id.* art. XI(1), at 77.

<sup>84</sup> *Id.* art. IX(1), at 76.

<sup>85</sup> *Id.*

<sup>86</sup> G.A. Res. 180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46 (1980).

<sup>87</sup> *Id.* art. 17, at 196.

<sup>88</sup> *Id.* art. 18:1, at 197.

<sup>89</sup> *Id.* art. 21.

<sup>90</sup> G.A. Res. 39/46, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51/Add.1 (1985).

kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to lawful sanction.<sup>91</sup>

Neither exceptional circumstances nor orders from a superior officer or a public authority may be invoked to justify torture.<sup>92</sup> Each state agrees to "take effective legislative, administrative, judicial, or other measures to prevent acts of torture in any territory under its jurisdiction."<sup>93</sup>

The Convention established the Committee against Torture, composed of ten experts.<sup>94</sup> Its responsibilities include monitoring the progress made in the implementation of the Convention and reviewing and commenting on reports submitted by states on the measures they have taken to give effect to their responsibilities under the Convention.<sup>95</sup> The Committee may also examine "reliable information which appears to it to contain well-founded indications that torture is being systematically practiced in the territory of a State Party."<sup>96</sup> A state may recognize the competence of the Committee against Torture to receive and consider charges by one state party that another state party is not fulfilling its obligations under this Convention,<sup>97</sup> and from or on behalf of victims of a violation by a state party of the provisions of the Convention.<sup>98</sup>

The pattern of ratification or accession of states to these human rights instruments varies widely. As of March 1, 1990, the number of states parties to each instrument are as follows:<sup>99</sup>

Instrument	Entered Into Force	Number of Parties
International Covenant on Economic, Social and Cultural Rights	January 3, 1976	95
International Covenant on Civil and Political Rights	March 23, 1976	90
Optional Protocol to the International Covenant on Civil and Political Rights	March 23, 1976	49
International Convention on the Elimination of All Forms of Racial Discrimination	January 4, 1969	129

<sup>91</sup> *Id.* art. 1:1.

<sup>92</sup> *Id.* art. 2:2 to :3.

<sup>93</sup> *Id.* art. 2:1.

<sup>94</sup> *Id.* art. 17:1, at 199.

<sup>95</sup> *Id.* art. 19:3.

<sup>96</sup> *Id.* art. 20:1.

<sup>97</sup> *Id.* art. 21.

<sup>98</sup> *Id.* art. 22, at 200.

<sup>99</sup> It should be noted that neither the United States nor South Africa are parties to any of the international conventions.

International Convention on the Suppression and Punishment of the Crime of <i>Apartheid</i>	July 18, 1976	88
Convention on the Elimination of All Forms of Discrimination Against Women	September 3, 1981	102
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	June 26, 1987	51

Once these seven international instruments enter into force and are widely accepted, the most general legal obligations will be established among states to protect human rights and fundamental freedoms.

These important developments, all accomplished by the United Nations, have profoundly transformed the classic norms of international law. In this respect, Tunkin recognized that,

[c]ontemporary international law proceeds from the fact; and this is exceedingly important, that a close link exists between a state's ensuring basic human rights and freedoms and the maintenance of international peace and security. This link is stressed in many international conventions (particularly the Convention on the Elimination of All Forms of Racial Discrimination and the Covenants on human rights) and in United Nations General Assembly resolutions.<sup>100</sup>

## V. The Principle of Non-Discrimination Throughout the World

The International Convention on the Elimination of All Forms of Racial Discrimination<sup>101</sup> and its enforcement machinery<sup>102</sup> contains the most precise expression of the principle of Non-discrimination. After the Convention was adopted in 1965, the United Nations approved a number of international instruments in the field of human rights; seven of these instruments, including the above-mentioned conventions, contain reporting obligations for those states which become parties. The Convention thus serves as a model for the procedure and action of the other monitoring organs; accordingly, the following comments are equally applicable to the other human rights instruments. As of March 1, 1990, out of 159 U.N. members, 129 are parties to the Convention, which is more than any other human rights treaty except the Geneva Red Cross Convention.<sup>103</sup>

Under the terms of the Convention, states parties "condemn racial segregation and apartheid,"<sup>104</sup> "undertake to pursue by all ap-

<sup>100</sup> G. TUNKIN, *THEORY OF INTERNATIONAL LAW* 81-82 (1974).

<sup>101</sup> G.A. Res. 2106, *supra* note 58, at 47.

<sup>102</sup> *Id.* arts. 8-14, at 49-50.

<sup>103</sup> Notable abstentions include the United States, South Africa, Japan, and Angola.

<sup>104</sup> G.A. Res. 2106, *supra* note 58, art. 3, at 48.

appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races,"<sup>105</sup> and "to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists."<sup>106</sup> States must not only refrain from engaging in any act or practice of racial discrimination themselves, but also "prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group, or organization."<sup>107</sup> The Convention further provides that when the circumstances so warrant, states parties shall take, "in the social, economic, cultural, and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms."<sup>108</sup> States parties further agree to,

condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination.<sup>109</sup>

States are also required to,

declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof.<sup>110</sup>

States agree to "declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organization or activities as an offence punishable by law."<sup>111</sup>

The Convention contains a litany of rights and freedoms which shall be enjoyed "without distinction as to race, colour, or national or ethnic origin."<sup>112</sup> In addition to the rights set forth in the Univer-

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<sup>105</sup> *Id.* art. 2:1.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* art. 2:2.

<sup>109</sup> *Id.* art. 4.

<sup>110</sup> *Id.* art. 4(a); cf. Universal Declaration of Human Rights, G.A. Res. 217, U.N. Doc. A/810, art. 19, at 71, 74-75 (1948) ("Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."). See also *Covenant on Civil and Political Rights*, G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16) art. 19, at 52,55, U.N. Doc. A/6316 (1966) (providing rights to freedom of expression similar to the Universal Declaration but subject to restrictions if necessary for the respect of the rights or reputations of others or for national security or public safety).

<sup>111</sup> G.A. Res. 2106, *supra* note 58, art. 4(b), at 48.

<sup>112</sup> *Id.* art. 5(c).

sal Declaration of Human Rights, the Convention also protects the "right to inherit"<sup>113</sup> and the "right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theaters and parks."<sup>114</sup> The Convention specifically protects the "rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration,"<sup>115</sup> the "right to form and join trade unions,"<sup>116</sup> and the "right to housing."<sup>117</sup> States will also,

[A]ssure to everyone within their jurisdiction effective protection and remedies, through competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.<sup>118</sup>

States agree "to adopt immediate and effective measures, particularly in the fields of teaching, education, culture, and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance, and friendship among racial or ethnic groups."<sup>119</sup>

International scrutiny is based on the Committee's review of the periodic reports that states are required to submit<sup>120</sup> which detail the legislative, judicial, administrative, and other measures adopted which give effect to the Convention.<sup>121</sup> The Committee reports annually to the General Assembly and makes suggestions and general recommendations based on the examination of the reports and information received from the states.<sup>122</sup>

Theodor Meron notes that,

[W]hile the Committee has not been given general competence to interpret the Convention, as a treaty organ, the Committee may be competent to interpret the Convention insofar as is required for the performance of the Committee's functions. Such an interpretation per se is not binding on state parties, but it affects their reporting obligations and their internal and external behavior.<sup>123</sup>

In its decision of March 22, 1984, the Committee expressed the opinion that,

[T]he failure of certain States parties to submit the required re-

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<sup>113</sup> *Id.* art. 5(d)(vi).

<sup>114</sup> *Id.* art. 5(f), at 49.

<sup>115</sup> *Id.* art. 5(e)(i).

<sup>116</sup> *Id.* art. 5(e)(ii).

<sup>117</sup> *Id.* art. 5(e)(iii).

<sup>118</sup> *Id.* art. 6.

<sup>119</sup> *Id.* art. 7.

<sup>120</sup> *Id.* art. 8:1.

<sup>121</sup> *Id.* art. 9:1.

<sup>122</sup> *Id.* art. 9:2.

<sup>123</sup> Meron, *The Meaning and Reach of the International Convention on the Elimination of All Forms of Racial Discrimination*, 79 AM. J. INT'L L. 283, 285 (1985).



ports under article 9 is due either to difficulties resulting from unavailability of personnel with the requisite competence in the field of human rights reporting, or a lack of political will to fulfill obligations flowing from the Convention.

The reporting system is the most decisive element in the monitoring process with which the Committee is charged, and it is the principal means by which pressure is brought to bear upon States parties to fulfill the substantive obligation to eliminate racial discrimination in all its forms. The latent nature of racial discrimination, its persistence, and its susceptibility to sudden flare ups and accentuation make it imperative that monitoring should be rigorous.

A State's concern for human equality and dignity cannot terminate abruptly at its national borders. Nor can a State's condemnation of racial discrimination and its formal undertaking to eliminate it within its own frontiers be compatible with its indifference to the practice of racial discrimination outside those frontiers—much less with policies which encourage or support to those abroad who openly practise racial discrimination and propagate racism. The unequivocal affirmation, contained in the Convention's preamble, that States parties are 'resolved . . . to build an international community free from all forms of racial segregation and racial discrimination' cannot be viewed as empty rhetoric; it is a solemn statement defining one of the objectives of the Convention.<sup>124</sup>

From its inception, the Committee has actively participated in the international struggle against *apartheid*. It has declared that

all policies, practices or relations which have the effect of supporting, sustaining or encouraging racist regimes are irreconcilable with the commitment to the cause of the elimination of racial discrimination which is inherent in the ratification of, or accession to, the International Convention . . . and [is] inconsistent with the specific commitment of States parties to condemn racial segregation and *apartheid* in accordance with Article 3 of the Convention, and their resolve to build an international community free from all forms of racial segregation and racial discrimination, expressed in the Preamble of the Convention.<sup>125</sup>

The Committee also exercises other important functions. Under the Convention, a discretionary procedure of state-to-state complaints has been established to address complaints by individuals or groups of individuals,<sup>126</sup> the Committee has advisory responsibilities relating to the attainment of the principles and objectives of the Convention in trust and non-self-governing territories.<sup>127</sup>

Over the Committee's twenty-year existence, the Convention

[H]as been—and it remains today—the international community's *only* tool for combating racial discrimination which is at one and the same time universal in reach, comprehensive in scope, legally binding in character, and equipped with built-in measures of implementation, including an international machinery—a pioneer in the

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<sup>124</sup> 33 U.N. GAOR Supp. (No. 18) at 110-111, U.N. Doc. A/33/18 (1978).

<sup>125</sup> 30 U.N. GAOR Supp. (No. 18) at 68, U.N. Doc. A/10018 (1975).

<sup>126</sup> G.A. Res. 2106, *supra* note 58, art. 11 at 49.

<sup>127</sup> *Id.* art. 15, at 50.

field—responsible for monitoring the actual implementation of their obligations by the contracting sovereign states.<sup>128</sup>

The experience of the Committee, accomplished under the provisions of the Convention, demonstrates that

[T]he general principles of the world-wide anti-racism campaign, and in particular the principles of the Convention which the Committee serves, are truly a common denominator of the diverse cultural and social traditions of all nations, a common ground on which all can meet and work in unison. Amidst limitless variety, nations, including those which otherwise pursue divergent aims, can find—and have found—in their common commitment to the goal of eliminating racial discrimination a rare occasion for unanimity.<sup>129</sup>

The General Assembly designated the ten-year period beginning on December 10, 1973,<sup>130</sup> as the "Decade for Action to Combat Racism and Racial Discrimination,"<sup>131</sup> approved the Programme for the Decade, and invited "Governments, United Nations organs, the specialized agencies, and other intergovernmental organizations, and non-governmental organizations to participate in the observance of the Decade."<sup>132</sup>

The Programme for the Decade, which appears as an annex to the General Assembly resolution 3057, stated that

The ultimate goals of the Decade are to promote human rights and fundamental freedoms for all without distinction of any kind such as race, colour, descent or national or ethnic origin, or other status, especially by eradicating racism and racial discrimination; to arrest any expansion of racist policies, to eliminate the persistence of racist policies and to counteract the emergence of alliances based on mutual espousal of racism and racial discrimination; to resist any policy and practices which lead to the strengthening of the racist regimes and contribute to the sustenance of racism and racial discrimination; to isolate and dispel the fallacious and mythical beliefs that contribute to racism and racial discrimination; and to put an end to racist regimes.<sup>133</sup>

The General Assembly launched a Second Decade in 1983 because it recognized that the lofty goals of the First Decade remained unrealized.<sup>134</sup>

The Committee has been active in the Decades by intervening in the two World Conferences to Combat Racism and Racial Discrimi-

<sup>128</sup> 33 U.N. GAOR Supp. (No. 18) at 109, U.N. Doc. A/33/18 (1978) (emphasis in original).

<sup>129</sup> *Id.* at 108.

<sup>130</sup> December 10, 1973 was the twenty-fifth anniversary of the adoption of the Universal Declaration on Human Rights. 1972 U.N.Y.B. 423, U.N. Sales No. E.74.I.1; G.A. Res. 2919, 27 U.N. GAOR Supp. (No. 30) at 62, U.N. Doc. A/8730 (1973).

<sup>131</sup> G.A. Res. 3057, 28 U.N. GAOR Supp. (No. 30) at 70, U.N. Doc. A/9030 (1974).

<sup>132</sup> *Id.*

<sup>133</sup> REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES TO THE COMMISSION ON HUMAN RIGHTS ON ITS TWENTY-FIFTH SESSION at 50, U.N. Doc. E/CN.4/1101 (1972).

<sup>134</sup> 1983 U.N.Y.B. 806-14, U.N. Sales No. E.86.I.1; G.A. Res. 38/14, 38 U.N. GAOR Supp. (No. 17) at 178, U.N. Doc. A/38/47 (1984).

nation,<sup>135</sup> and by making suggestions in its annual reports to the General Assembly.<sup>136</sup> For the Second World Conference the Committee prepared, on the basis of the work of special rapporteurs, two studies on the application of articles 4 and 7 of the Convention.<sup>137</sup> It continues to participate in this world effort.

## VI. Causes and Problems of Discrimination

Despite the efforts of the United Nations, and notwithstanding the application of the different international instruments protecting human rights, as well as numerous seminars, symposiums, and other meetings of experts, scientists, governmental, and non-governmental organizations, discriminatory policies and practices still persist in many parts of the world.

Discrimination persists because prejudice, which is at the base of any policy of discrimination, is steeped in tradition and folklore, developed in literature, and built into institutions. It frequently persists even after the circumstances have changed. According to some social scientists,

[T]he fundamental attitude underlying the use of prejudice as a group weapon is ethnocentrism, *i.e.*, the firm belief in the extraordinary value and worth of one's own group, coupled with a dislike for whatever or whoever is different. Moreover, ethnocentrism is functional and thus serves the group concerned in its struggle for power and wealth. It flourishes best in conflict situations.<sup>138</sup>

A few centuries ago, discrimination on the basis of religion, rather than race, was widespread. Today, religious differentiation is not as significant a cause of group conflict, but to a large extent, "racial" differentiation has taken its place. People today undermine their political, economic, or social opponents not by claiming that they are of the wrong faith, but they are "naturally" inferior because of their race. The use of race as grounds for prejudice, as well as for discrimination, has spread because of the increased contact among different peoples of the world and the increasingly multiracial nature of many societies.

The American slavery experience is the most typical and inhuman example of racial discrimination. Colonialism played a significant role in the development of racial prejudice and discrimination. Motivated by economic concerns, colonialism exploited sources of raw material in order to develop markets for European goods; it soon turned into a political game in which the distant pawns in Africa, Asia, and America were arranged to reflect the ever-changing political power configurations of Europe.

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<sup>135</sup> 1983 U.N.Y.B. 802, U.N. Sales No. E.86.I.1.

<sup>136</sup> 1969 U.N.Y.B. 489, U.N. Sales No. E.71.I.1.

<sup>137</sup> 1983 U.N.Y.B. 802, U.N. Sales No. E.86.I.1.

<sup>138</sup> H. SANTA CRUZ, *supra* note 30, at 3.

At the present stage of international relations, discrimination, especially racial discrimination, primarily affects vulnerable groups such as minorities, indigenous populations, people living in poverty, migrant workers, and people with little or no education.

A United Nations seminar on political, economic, and cultural bases of racism, held in Nairobi in May 1980, adopted several conclusions and recommendations on the causes of discrimination.<sup>139</sup> It found that the common denominator of racism and discrimination "was either a lack of respect for, or lack of acceptance of, the inherent dignity and equality of all human beings."<sup>140</sup> Invariably, the desire to dominate was present in situations of discrimination.<sup>141</sup> It also stressed that economic exploitation of privilege is one of the persistent causes of racism and discrimination.<sup>142</sup> This phenomenon is "particularly evident in the case of South Africa and its *apartheid* system."<sup>143</sup>

It was said that "cultural arrogance and the destruction of indigenous cultures often contributed to the spread of racism and racial discrimination."<sup>144</sup> The regulation of behavior has been used to force acceptance of the superiority of the dominating group.<sup>145</sup> In this sense, "the religion of the dominant or dominating group imposed on the indigenous group has served as a religious or spiritual vehicle for the spread of . . . discrimination."<sup>146</sup> It was also pointed out that "[t]he practice of racism and discrimination can be overt, subtle, or institutionalized."<sup>147</sup> The conference concluded that "the most abhorrent form of institutionalized racism in the history of human civilization is the *apartheid* regime."<sup>148</sup>

Education and the information media can be used to combat discrimination by instilling a spirit of respect for all human-kind and a willing acceptance of the inherent dignity of all peoples whatever their colour, origin, or culture.<sup>149</sup> Appropriate legislation is essential to combat discrimination, but should be complemented by other measures, such as education. Suitable recourse procedures should be provided for victims of discrimination.

Another seminar on international economic order and human

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<sup>139</sup> 1980 U.N.Y.B. 801, U.N. Sales No. E.83.I.1.

<sup>140</sup> SEMINAR ON POLITICAL, ECONOMIC, CULTURAL AND OTHER FACTORS UNDERLYING SITUATIONS LEADING TO RACISM INCLUDING A SURVEY OF THE INCREASE OR DECLINE OF RACISM AND RACIAL DISCRIMINATION, at 1, 33, U.N. Doc. ST/HR/SER.A/7 (1980).

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> See, e.g., *UNESCO Meeting Adopts Compromise Declaration on Mass Media Question*, UN MONTHLY CHRON., Dec. 1978, at 54-55.

rights, held in Geneva in 1980, reaffirmed that "the elimination of . . . all forms of racial discrimination, colonialism, foreign domination and occupation, aggression, and threats against national sovereignty is essential to the establishment of a new international economic order and full realization of . . . human rights."<sup>150</sup>

The struggle against racial discrimination is not over. The Director General of UNESCO has properly stated:

Despite the Universal Declaration of Human Rights adopted over 30 years ago, despite the Decade of Action to Combat Racism and Racial Discrimination proclaimed by the United Nations in 1973, and International Anti-*apartheid* Year which has just ended, despite the relentless efforts of the international community, among which those of this Committee occupy such an important place, and despite that most recent findings of scientific and historical studies which destroy the fallacious theories of racial rank order, racial prejudice is still rampant.<sup>151</sup>

## VII. The World Struggle to Reaffirm the Principle of Non-Discrimination

The United Nations has made considerable progress toward the appreciation and observance of the human rights, especially of the principal of non-discrimination. Nobody contends, however, that it is unnecessary to continue these activities and to widen their scope.

Despite progress already made, increasing tensions in international relations and insufficient progress towards the new international economic order threatens the hard-won achievements in the application of the new international norms on human rights.

Methods used to implement human rights must account for the traditions and cultures of each society as well as its juridical system. Studies demonstrate that the incorporation of international regulations on human rights into the national legislation and jurisprudence is incomplete, which requires an improvement in both the observance and the application of these regulations in the international and domestic fields.

Experience demonstrates that the observance and protection of human rights must be implemented as a whole; the principle of non-discrimination must be applied to all rights, avoiding separation or division among them.

The General Assembly, considering the universal adoption of human rights instruments to be the best answer to promote the elimination of discriminatory practices, insists that, upon the conven-

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<sup>150</sup> SEMINAR ON THE EFFECTS OF THE EXISTING UNJUST INTERNATIONAL ECONOMIC ORDER ON THE ECONOMICS OF THE DEVELOPING COUNTRIES AND THE OBSTACLE THAT THIS REPRESENTS FOR THE IMPLEMENTATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, at 33, U.N. Doc. ST/HR/SER.A/8 (1980).

<sup>151</sup> 34 U.N. GAOR Supp. (No. 18) at 1, 120, U.N. Doc. A/34/18 (1979).

ience but with urgency, states become parties to the international instruments on human rights. The principal of universality is essential to achieve this fundamental objective, but adherence to these instruments is not sufficient. States must ensure effective implementation of the provisions contained in those instruments by enacting appropriate legislation, or by adopting judicial, administrative, or other measures.

States, inter-governmental agencies, and non-governmental organizations must continue to expose and combat the evils of discrimination through joint efforts. The international media must intensify its reporting to expose the great dangers of discrimination.

### VIII. The Principle of Non-discrimination and the Coming Century

As we approach the twenty-first century, we must hope that the human suffering which results from discriminatory policies and practices shall cease, or at least be lessened somehow. This hope can be realized by the use of legally binding international instruments, which are powerful tools at the disposal of humanity.

Many jurists and qualified international publicists hold that the principle of non-discrimination, and the respect and protection of human rights and fundamental freedoms in general, are now a peremptory norm of general international law (*jus cogens*).<sup>152</sup>

Since Man is the supreme subject of law, all the world's institutions should be devoted exclusively to making his life agreeable and happy. The elimination of discrimination, especially racial discrimination, is fundamental. In this regard, the words spoken by President Nyerere of the United Republic of Tanzania on the occasion of

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<sup>152</sup> See, e.g., M. McDUGAL, H. LASSWELL & L. CHEN, *HUMAN RIGHTS AND WORLD PUBLIC ORDER: THE BASIC POLICIES OF AN INTERNATIONAL LAW OF HUMAN DIGNITY* (1980) (the great bulk of contemporary human rights are identifiable as *jus cogens*); Raven, *International Human Rights Take Root, or The Life of the Banyan Tree*, 11 HUM. RTS. Q. 341 (1989) (international human rights have taken root throughout the world); Parker and Neylon, *Jus Cogens: Compelling the Law of Human Rights*, 12 HASTINGS INT'L & COMP. L. REV. 411 (1989) (human rights law presently constitutes imperative rules of *jus cogens*); The South West Africa Cases (Ethiopia v. S. Afr.; Liberia v. S. Afr.), 1966 I.C.J. 6 (Tanaka, J., dissenting) (the law concerning the protection of human rights may be considered to belong to *jus cogens*); Barcelona Traction, Light and Power Company (Belg. v. Spain), 1970 I.C.J. 3 (the protection of human rights is an obligatory legal norm and human rights principles are *jus cogens*); *Filar-tiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980) (the right to be free from torture has become part of customary international law). See also Klein, *A Theory for the Application of the Customary International Law of Human Rights by Domestic Courts*, 13 YALE J. INT'L L. 332 (1988) (there has been an emergence of an international law of human rights); Chen, *Protection of Person (Natural and Judicial)*, 14 YALE J. INT'L L. 542 (1989) (development of customary human rights law); *Fernandez-Roque v. Smith*, 622 F. Supp. 887 (D.C. Ga. 1985) (there is a growing body of international human rights law that can be characterized as customary international law). But cf. T. MERRON, *HUMAN RIGHTS IN INTERNAL STRIFE: THEIR INTERNATIONAL PROTECTION* (1987) (human rights in treaties are not *jus cogens*); Higgins, *Derogation Under Human Rights Treaties*, 1976-77 BRIT. Y.B. INT'L L. (international human rights treaties contains elements that are binding as principles but that does not mean that all human rights are *jus cogens*).

the twenty-fifth anniversary of the United Nations are worth recalling:

In particular, the United Nations has to act against the forces of racialism and colonialism. For these represent the kind of tyranny and oppression which deny all hope to men, and which therefore force them to express their humanity through violence. A man can change his religion if he wishes; he can accept a different political belief—or in both cases give the appearance of doing so—if this would relieve him of intolerable circumstances. But no man can change his colour or his race. And if he suffers because of it, he must either become less than a man, or he must fight. And for good or evil, mankind has been so created that many will refuse to acquiesce in their own degradation; they will destroy peace rather than suffer under it.<sup>153</sup>

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<sup>153</sup> Das, *Measures of Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination With Special Reference to the Provisions Concerning Reports from States Parties to the Convention*, 4 REVUE DES DROITS DE L'HOMME, EXTRAIT (Human Rights Journal) 213, 262 (1971) (citing Official Records of the Twenty-Fifth Session of the General Assembly, Plenary Meetings, 1867th meeting).

